ARC 3294C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(3), the Department of Human Services hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment reimplements the cost-containment strategy to adjust Medicaid reimbursement rates for physician services rendered in facility settings (e.g., hospitals), by applying a "site of service" differential to reflect the difference between the cost of physician services when provided in a health facility setting and the cost of physician services when provided in a physician's office. It should be noted that the strategy in this amendment was originally legislatively mandated in 2011 as a directed/mandated cost-containment strategy at that time. However, the Legislature "nullified" the original mandate in 2012, based on provider complaints about reduced payments in facility settings.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3165C** on July 5, 2017. This amendment was also Adopted and Filed Emergency and published as **ARC 3162C** on the same date and became effective July 1, 2017. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The Department received comments from a total of 17 respondents. All, with one exception, were from community mental health centers (CMHCs), staff from CMHCs, and associations representing CMHCs and various practitioners who practice/work at CMHCs. The only non-CMHC-affiliated comment received was from the father of a 27-year-old man who has been a patient at one of the main CMHCs that submitted comments. The father did not specify any particular proposed rule provision or request a change thereto but, instead, spoke generally about the potential impact the site of service (SoS) rule change could have on already scarce psychiatric services in the state. Generally speaking, the comments from the respondents all identified the same issues and concerns related to this amendment. At this time, the Department will not change the amendment based on the public comments received from the respondents.

Comment 1: A respondent stated that paragraph 79.1(7)"b" specifies that the Department intends to apply an SoS differential to physician services and asked the Department to clarify that this is being applied to physician services only and not to services provided by mid-level practitioners, such as physician assistants (PAs) and advanced registered nurse practitioners (ARNPs).

Department response 1: To the extent subrule 79.1(7) is limited to "physicians," new paragraph "b" would also be limited to physicians and would not be applied to mid-level practitioners, such as PAs and/or ARNPs. The only exceptions would be the following:

1. Since PAs are not able to bill and be paid directly for services under Iowa Medicaid, any services rendered by PAs would be billed under their supervising/employing physician or clinic. Therefore, to the extent a PA service rendered in a facility setting is billed by the supervising/employing physician or clinic, and since the physician or clinic would be a "physician" provider type, such service would be subject to the SoS differential.

2. The only circumstance where services rendered by an ARNP in a facility setting would be subject to the SoS reduction would be if the ARNP was not otherwise separately enrolled (i.e., as an ARNP provider type) and such services were billed by the ARNP's employing physician or clinic. Under both federal and state laws and regulations, ARNPs are able to enroll and bill as independent practitioners, so most ARNPs do enroll and bill under their own provider numbers. Where that is the case, the ARNP would not be subject to the SoS reductions for services rendered in a facility setting.

Comment 2: A respondent commented that the Department is referencing place of service (POS) codes in paragraph 79.1(7)"b" that match Medicare's list of "facilities" and expressed concern about the inclusion of code POS 53 – community mental health center. The respondent stated that under Medicare definitions, Iowa CHMCs are not considered facilities, do not use POS 53 as the billing code for Medicare, and are not subject to Medicare.

Department response 2: CMHCs billing for services under the CMHC provider category will not have payments cut back for the SoS differential in cases where the service is provided at place of service 53 (CMHC). In these cases, under Medicaid, there is no separate facility bill-to account for the overhead, and therefore no SoS differential will be applied, consistent with the intent of the policy.

Comment 3: Noting that, for Iowa Medicaid, accredited CMHCs do use code 53 in box 24 of the CMS-1500 claim form, a respondent expressed concern that with Iowa's adoption of the Medicare facilities list, CMHCs in Iowa will be subject to an SoS differential for Medicaid purposes that they are not subject to for Medicare and stated that, should this be the case, Iowa CMHCs will experience reductions in payments that do not occur with Medicare and that will result in reduction to access of psychiatric services, which are already in short supply in Iowa. The respondent requested that POS 53 be removed from Iowa Medicaid's facilities list for the purpose of applying SoS differentials and that Iowa CMHCs be treated by Medicaid as they are by Medicare for the purpose of this policy change.

Department response 3: CMHCs billing for services under the CMHC provider category will not have payments cut back for the SoS differential in cases where the service is provided at place of service 53 (CMHC). In these cases, under Medicaid, there is no separate facility bill-to account for the overhead, and therefore no SoS differential will be applied, consistent with the intent of the policy.

Comment 4: A respondent commented that for the entities defined as "facilities" under Medicare, there are methods for them to recoup some of the SoS differential as bad debt through cost reporting but that Iowa's CMHCs are not defined as a "facility" by Medicare and do not have this option and will, therefore, be put at an extreme financial disadvantage should the SoS differential be applied. The respondent stated that this will only serve to further limit timely access to mental health services for Iowa's Medicaid population.

Department response 4: Please refer to Department responses 2 and 3.

Comment 5: A respondent commented that the POS code list in paragraph 79.1(7)"b" is the same as the Medicare list of "facilities," that POS 53 is for CMHCs, and that, according to Medicare definitions, Iowa CMHCs are not considered a "facility" (unless the CMHC is hospital-based or meets a different set of criteria than Iowa requires) and do not use POS 53 as the POS billing code for Medicare and are not subject to the SoS differential under Medicare. The respondent explained that the respondent's CMHC is not eligible to bill a "facility" fee and a professional fee, as is the case with Medicare-defined facilities and that, for Iowa Medicaid, POS 53 is used in box 24b on the CMS-1500 claim form for CMHCs that are accredited and established by Iowa Code definitions for CMHCs.

Department response 5: Please refer to Department responses 2 and 3.

Comment 6: A respondent commented that based on experience with Medicare and SoS codes for telehealth, CMHC providers have experienced a 25 to 30 percent rate reduction for these services and that, should POS 53 become subject to the SoS differential, Iowa CMHCs could experience a significant reduction in payment for services, thus resulting in reducing staff psychiatry time and a reduction of access to psychiatric services, which are already in short supply in Iowa. The respondent requested that POS 53 (CMHC) be removed from the list of facility codes for the purposes of applying the SoS differential.

Department response 6: Please refer to Department responses 2 and 3.

Comment 7: A respondent commented that information on proposed paragraph 79.1(7)"b" indicates that the intent was to decrease rates for physicians that provide services in a "facility," as defined as a (facility) POS by Medicare and that CMHCs are defined under Medicare as a "group practice," not a facility (unless the CMHC meets a different set of criteria than Iowa requires). The respondent further commented that the respondent's CMHC does not use POS 53 when it bills Medicare, that the respondent does not bill a separate facility fee and is not subject to the SoS differential payment under Medicare, and that, under Iowa Medicaid, CMHCs are categorized as a POS 53 (different than under Medicare). The respondent believes that the POS 53 (CMHC) should not be included as an SoS that is subject to the decreased physician rates under Iowa Medicaid rules and stated that the respondent's CMHC does not have the ability to charge additional fees as a Medicare-defined "facility" would.

Department response 7: Please refer to Department responses 2 and 3.

Comment 8: A respondent stated the belief that there would be serious unintended consequences to penalizing CMHCs by making them subject to the proposed SoS rule, that CMHCs already serve a high percentage of individuals on Medicaid, and that, with the tremendous need to have outpatient mental health services available to individuals in our communities, this SoS differential for CMHCs would drastically reduce the availability of psychiatric services. The respondent commented further that the availability of outpatient mental health care (through CMHCs) is essential in keeping individuals out of higher cost services, such as the emergency room or inpatient care settings.

Department response 8: Please refer to Department responses 2 and 3.

Comment 9: A respondent expressed concerned that the proposed rule is an unintended consequence of using the Medicare list of facilities to include CMHCs (POS 53). The respondent commented that according to Medicare definitions, Iowa CMHCs are not considered a "facility" (unless the CMHC is a hospital-based CMHC or meets a different set of criteria than Iowa requires), do not use 53 as the POS billing code for Medicare and are not subject to the SoS differential, and that the respondent is not eligible to bill a "facility" fee and a professional fee as is the case with Medicare-defined facilities. The respondent also pointed out that for Iowa Medicaid, code 53 is used in box 24b of the CMS-1500 claim for CMHCs that are accredited and established by Iowa Administrative Code definitions for CMHCs (Chapter 24).

Department response 9: Please refer to Department responses 2 and 3.

Comment 10: A respondent commented that for entities that are "facilities" under Medicare, there is a method for them to recoup some of this rate through a cost report reconciliation process but that Iowa CMHCs do not have that option as they are not a "facility" as defined by Medicare. The respondent commented that by using the facility list from Medicare, Iowa CMHCs are put in a category that does not apply and for which the rule should not apply.

Department response 10: Please refer to Department responses 2 and 3.

Comment 11: A respondent commented that based on the respondent's experience with Medicare and the SoS code for telehealth, providers have experienced a 25 to 30 percent rate reduction for these services and that, should SoS code 53 become an SoS differential, Iowa's CMHCs could experience a significant reduction in payment for these services, thus resulting in their having to reduce staff and reduce access to psychiatric services, which are already a critical shortage area in Iowa.

Department response 11: Please refer to Department responses 2 and 3.

Comment 12: A respondent commented that the respondent's organization has worked diligently to "expand" access to psychiatric services via telehealth in response to the growing demand for these services and that the proposed rule would severely limit the ability of the respondent's organization to provide this crucial service, resulting in longer waiting lists for psychiatric services with negative consequences to clients and their families, not to mention a likely increased reliance upon hospital emergency departments and mental health units, the most costly services in Iowa's system of care.

Department response 12: Code POS 02 is defined as "the location where health services and health related services are provided or received, through a telecommunication system." POS 02 is used to report that a billed service was furnished as a telehealth service from a distant site. The only portion that is considered telehealth services is when the patient was present and interacting with the distant site's physician or practitioner. An originating site is the location of a Medicaid member at the time the telehealth service is furnished. Originating sites can include physician offices, hospitals, critical access hospitals (CAHs), rural health clinics, federally qualified health centers, hospital-based or CAH-based renal dialysis centers, skilled nursing facilities, and CMHCs. The "telehealth" POS code (i.e., "02") would not be used by an originating site that can bill a facility fee; instead, the originating site would continue to use the POS code that applies to the type of facility where the patient is located.

Beyond the foregoing, it is noted that Iowa Medicaid does not reimburse telehealth services in the same way as Medicare. In fact, Iowa Medicaid does not allow separate or additional payment for the various telehealth "technical" component-type services. Instead, Iowa Medicaid reimburses telehealth services the same as if the service were rendered in a face-to-face setting. Iowa Medicaid policy regarding telehealth is addressed in the Department's rule 441—78.55(249A), which provides as follows:

441—78.55(249A) Services rendered via telehealth. An in-person contact between a health care professional and a patient is not required as a prerequisite for payment for otherwise-covered services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided, as well as being in accordance with provisions under rule 653—13.11(147,148,272C). Health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.

It is important to emphasize that CMHCs billing for services under the CMHC provider category will not have payments cut back for the SoS differential, in cases where the service is provided at POS 02 (telehealth). In these cases, under Medicaid, there is no separate facility bill-to account for the overhead, and therefore no SoS cut would be taken, consistent with the intent of this policy.

Comment 13: A respondent noted that one of the SoS codes referenced in the informational letter for this rule is 02, telehealth, and commented that telehealth services at CMHCs are provided by either employees or contract staff, that those services are billed by the CMHC (which is the same as a physician office), with the CMHC tax ID, as part of the CMHC services, that thus the CMHC incurs all cost associated with delivery of the physician services, and that the services are not billed as a separate physician practice. The respondent commented that a reduction in reimbursement for telehealth services at CMHCs will likely result in the reduction of providing telehealth service, which will reduce access for patients, primarily in rural areas. The respondent also commented that if telehealth services are reduced due to this cost-containment strategy, the result will be longer wait times for patients to see an on-site psychiatrist, of which there is a short supply, and requested that the Department not require CMHCs to use 02, telehealth, as an SoS.

Department response 13: Please refer to Department response 12. In addition, it is noted that there will be no reduction in reimbursement for services rendered via telehealth, since the services are already paid at the same reimbursement rate as if the services were rendered face to face.

Comment 14: A respondent commented that CMHCs have begun to use telehealth services out of necessity to keep up with the demand for outpatient psychiatry over the past two years, that the cost of providing telehealth services is higher than having an on-site provider, and that, if CMHCs are required to use a POS 02 for telehealth services in their outpatient setting and be subject to the rate reduction under this cost-containment measure, it will make telehealth services unaffordable for CMHCs to provide. The respondent also commented that since telehealth is used in mostly rural areas, it may eliminate the ability to see a medication provider close to home. The respondent stated that if this is implemented, CMHCs will be forced to reduce their telehealth services, reducing capacity for individuals to receive care in the most cost-effective setting, and will likely result in increased use of emergency rooms. The respondent commented that when providing telehealth services, the CMHC pays for the provider and all of the costs associated with the service and that the CMHC "owns" the service. The respondent expressed the understanding that independent telehealth providers should be reimbursed less if they were "owning" the service, but that such is not the case for CMHCs in Iowa. The respondent commented that this could be clarified by not requiring CMHCs to use the POS 02 for their telehealth services.

Department response 14: Please refer to Department responses 12 and 13.

Comment 15: A respondent commented that the cost-containment strategy that the respondent is most concerned with is the SoS differential payment, which would reduce Medicaid payments for physician services provided in a "facility setting." The respondent commented that while CMHCs are not considered "facilities" by Medicare, they have been included in Iowa's list of facilities that will receive reduced Medicaid payments for physician services and that mental health centers are not allowed to recoup this reduction in payment by charging a facility fee, however. With regard to POS 53 (CMHC), the respondent noted that, according to Medicare definitions, Iowa CMHCs are not considered a "facility" and do not use POS 53 as the POS billing code for Medicare and are not subject to the SoS differential and that, since Iowa CMHCs are not a facility with Medicare, they do not bill a facility fee. The respondent commented that it appears as though CMHCs should not appear

on this list and that, should the rule be implemented and the SoS differential be imposed, CMHCs could experience a significant reduction in payment for services, which in turn could result in reducing psychiatry time, which in turn reduces access to psychiatric services, which are already in short supply in Iowa, particularly in rural Iowa. The respondent requested that POS 53 be removed from the list of facility site codes for the purpose of applying SoS differential.

Department response 15: Please refer to Department responses 2 and 3.

The Council on Human Services adopted this amendment on August 9, 2017.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2017 Iowa Acts, House File 653, section 12(15)(a)(3).

This amendment will become effective October 4, 2017, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Adopt the following **new** paragraph **79.1(7)"b"**:

b. Payment reduction for services rendered in facility settings. The fee schedule amount paid to physicians based on paragraph 79.1(7)*"a"* shall be reduced by an adjustment factor, as determined by the department and published with the Iowa Medicaid fee schedule, to reflect the lower cost of providing physician services in a facility setting, as opposed to the physician's office. For the purpose of this provision, a "facility" place of service (POS) is defined as any of the following (consistent with "POS" definitions under Medicare, per the Medicare Claims Processing Manual, Chapter 12, Section 20.4.2, revised as of May 2017):

(1) Telehealth (POS 02).
(2) Outpatient hospital-off campus (POS 19).
(3) Inpatient hospital (POS 21).
(4) Outpatient hospital-on campus (POS 22).
(5) Emergency room-hospital (POS 23).
(6) Ambulatory surgical center (POS 24).
(7) Military treatment center (POS 26).
(8) Skilled nursing facility (POS 31).
(9) Hospice-for inpatient care (POS 34).
(10) Ambulance-land (POS 41).
(11) Ambulance-air or water (POS 42).
(12) Inpatient psychiatric facility (POS 51).
(13) Psychiatric facility-partial hospitalization (POS 52).
(14) Community mental health center (POS 53).
(15) Psychiatric residential treatment center (POS 56).
(16) Comprehensive inpatient rehabilitation (POS 61).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.